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THE WHITE HOUSE

WASHINGTON

SECRET

January 9, 1976

MEMORANDUM FOR: BRENT SCOWCROFT
FROM: WILLIAM HYLAND
SUBJECT: NSC Meeting on Intelligence

Attached are a series of summaries of the large decision book prepared for the President, as well as a summary of the House and Senate Committees' legislative proposals.

In my view the overriding issue that must be resolved first is whether there is going to be a major structural reorganization of the intelligence community (Tab D). If so, all other issues flow from this basic decision. If not, a great deal of work will still be required to take up the other basic issues -- oversight, restrictions, secrecy, and a host of legal issues (Tabs D and E)).

If you can only read one thing, I suggest you read Dick Ober's summary of the organizational issues at Tab D.

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MAY CONTAIN CONGRESSIONAL MATERIAL

ON-FILE NSC RELEASE
INSTRUCTIONS APPLY

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(Corresponds to the Index in the President's White Book)

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Introduction

Jack Marsh opens his memo by pointing out that the President has an "historical opportunity" to change the organization and management of the intelligence community while addressing the specific abuses that are the subject of both Congressional and public attention.

He then points out that the exposition to follow is meant to acquaint him with the scope and nature of such an undertaking as well as to familiarize himself with the format in which future decision papers on this subject will be forwarded.

He suggests an NSC-expanded meeting (to include the Attorney General) once the President has absorbed the contents to discuss the subjects arrayed in the book and to ascertain the views of his senior advisors.

Comment

The assumption is conveyed, without argument, that major changes are needed. This, of course, plays right into the hands of Congress by accepting their similar assertions. Since neither Marsh nor the Congress are substantial users of national intelligence -- the primary product of the intelligence community -- it is difficult to see how such an assumption can be made without support from more knowledgeable quarters. The answer, of course, is that "such a reorganization is needed to counter anticipated Congressional demands for same." Whether or not this, in-and-of-itself, is valid grounds for pursuing reorganization is questionable.

The NSC/OMB study acknowledges that while there is no agreement by the study participants that any reorganization is necessary, there is agreement that the Congress will propose major reorganizations, and that therefore the President should have his own options available.

On the other hand, if one looks closely at the organizational implications of what the two select committees have come up with so far, (see Tab^H), the conclusion is that the Congress is primarily interested in those changes that would make their goal of controlling events easier; i.e., the DCI having budgetary control so as to provide only one intelligence budget for review. There is also the distinct possibility that any legislation proposed by a committee in Congress calling for major changes in the intelligence community will be met with strong resistance from a variety of quarters (other committees with vested interests, Executive

Branch elements slated to lose within the community if such legislation were enacted, etc.)

In sum, there are enough issues such as correcting past abuses, facilitating oversight requirements of Congress, etc., not necessarily involving reorganization to go around. To presume that major changes -- for whatever reason -- can be effectively dovetailed with acceptable solutions to these issues is at best ambitious, and at worst too fraught with unknowns to pursue at this time.

Principles and Policy

The first section (entitled "Introduction") attempts to organize conceptually the goals toward which the President should move in addressing the role of the Intelligence Community in past abuses. The point is made that the culmination of several investigative activities (the two Select Committees, the Rockefeller Report, the Murphy Commission Report, etc.) provides an unparalleled opportunity to address -- in the process -- perceived deficiencies in management, the protection of sources and methods and the quality of the intelligence product. The goals are therefore defined as:

- elimination of abuses,
- improvements in management,
- improvements in quality of product,
- increased protection for sources and methods.

In order to reach these goals, certain problems must be overcome. These problems, or needs, must be met in order to accomplish the goals stated above. These needs are defined as:

- the need for explicit charters for all intelligence functions,
- the need to clarify intra-community relationships,
- the need to clarify relationships with the Congress

The need for a coherent strategy is also mentioned with respect to Congress, the public, and regarding Presidential direction to the community itself, but it is pointed out that any elaboration of such a strategy must await fundamental decisions with regard to the Intelligence Community as a whole.

* * * * *

The second section discusses the need for a charter for the intelligence community. It is pointed out that it is necessary to distinguish between providing information and services on the one hand, and policy advice on the other. If the latter is desirable then a way

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should be found to increase participation by the heads of intelligence organizations in major policy decisions (i. e., the DCI as a statutory member of the NSC). The assertion is made that the lack of a charter for specific components of the intelligence community has led to ambiguities and unclear guidelines in this respect.

Two subsidiary policy issues are posed and options are provided for each. The first asks if the charter for the community should institute greater accountability. The first option is to visibly increase accountability by streamlining the chain of command to insure specific individuals are responsible for specific community actions. This would help prevent abuses and encourage efficiency. An example is decisions being made throughout the community regarding electronic surveillance -- making it difficult to fix responsibility.

The second option is to not change the existing charter but to move forward administratively to correct deficiencies within the present system. The argument is made that most of the criticism involves aberrations not caused by basic flaws and to alter the charter would inhibit necessary flexibility. This exposition is followed by several charts depicting the various line and staff relationships within the community with regard to resource authority versus production.

The second subsidiary policy issue involves authority for covert action. It is pointed out that the President has asserted two principles regarding covert action. The first is that such activities are in the national interest and should not be prohibited by statute. The second is that there have been abuses (assassination activities), that these have been stopped and that future activities of this sort will be prohibited by Executive Order.

* * * * *

The third section of the chapter addresses the Executive-Congress relationship. It is pointed out that in addition to correcting abuses, the issues of reporting to Congress as well as proper oversight by Congress have arisen because of the vagueness of the 1947 act. Congress has seen these three issues together as constituting a lack of accountability. Various pros and cons are listed as to whether or not a charter for the intelligence community should be statutory or administrative. The arguments for a statute are diffuse while those for

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administrative action fall on the side of insuring flexibility in pursuing whatever policy is extant. Two options are posed: One being to oppose all forms of accountability (based on the assertion that intelligence and foreign policy are intertwined and therefore the Executive should run both) and the other to try to negotiate a compromise (based on "the bridge has already been crossed" theory).

The last section addresses the intra-community relationship problem in terms of the DCI's role as an objective advisor to the President. The relationship between the DCI and the Secretary of Defense is briefly defined. The role of the NSC staff is depicted as being a critical conduit of intelligence to the President primarily through their own analyses of intelligence products and their role as "managers of the producer/consumer dialogue." Guideposts are listed for the President's consideration in making any decisions concerning organization and management which, in effect, describe the present state of affairs:

- Competition in intelligence production
- DCI needs "base" (CIA leadership) to remain independent
- DCI direct access to the President
- Technical creativity retained (U-2, Glomar, etc.)

Charts also accompany this section which depict examples of information flow through the intelligence community.

Comment

The chapter is poorly organized and thoroughly confusing to read. The assumption in drafting it was obviously that organizational changes are expected and therefore an attempt had to be made to relate the various aspects inherent in such changes to the more obvious task at hand -- correction of abuses. If it is necessary to address this chapter in the meeting, I would point out that "most of the issues (whether valid or not) are covered."

Oversight and Restrictions

This chapter discusses the primary areas in which flagrant abuses of human rights have occurred; i.e., the domestic activities of the FBI and the CIA, and the resultant perceived Executive and Legislative oversight requirements.

The jurisdictional questions involving CIA and FBI activities in the U.S. are briefly discussed, as well as the pros and cons of whether the CIA or the FBI should have exclusive authority to collect foreign intelligence inside the U.S., whether such authority should be shared, whether one should share information that the other is prohibited by law from gathering, etc. No conclusions are reached.

Various methods of restricting FBI activities which in the past have resulted in abuses are discussed primarily in terms of whether statutory changes, Executive orders, internal Justice Department regulations, or various combinations of all three would constitute the best fix. The tentative conclusion is to await forthcoming Justice Department guidelines and build on those in seeking a solution.

Restrictions on domestic activities of the foreign intelligence agencies are discussed by reviewing the draft Executive Order on this subject as well as the remaining points within that draft order still at issue within the Executive Branch. The proposed restrictions concern the rights of U.S. citizens regarding first and fourth Amendment safeguards, the use by CIA of proprietaries in other than intended ways, and NSA and CIA assisting law enforcement agencies by virtue of enjoying a certain "immunity" from domestic legal safeguards. As might be expected, the unresolved disagreements involve exceptions to the restrictions, rather than the restrictions themselves. The two major issues concern sharing of information and cross-operational arrangements between the FBI and certain intelligence agencies which allow one or the other to gain information not otherwise obtainable under current statute or directives. The pros and cons in each case are laid out but no conclusions are reached.

* * * * *

The third section of this chapter addresses oversight within the Executive Branch. Current oversight arrangements within the intelligence community and the potential of oversight from outside (Rockefeller and Murphy Commissions both recommended PFIAB purview) the community ~~were~~ examined. The conclusion in the first instance is

are

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that past oversight has not worked and until there is a pre-eminent leader within the community (strengthened DCI, etc.) the prospects for either unilateral or community-wide oversight being effective are not promising. Oversight emanating from a strengthened PFIAB, the NSC, or even the Attorney General might be more effective but each has its drawbacks as well. No conclusions are reached, but the specific example of executive oversight regarding covert action is used to support specific ways of improving oversight where a hierarchical structure exists (NSC, 40 Committee, CIA). The reappointment of the Attorney General to the 40 Committee, adding an independent NSC staff to propose pros and cons of operations, and a reinstatement of formal meetings are suggested. A decrease in flexibility, together with a greater risk of disclosure are cited as cons to these suggestions.

* * * * *

The fourth section deals with Congressional oversight. The fact that there is a diffusion in responsibility from the "old days" within Congress regarding intelligence activities is pointed out. A broad discussion ensues, covering the problems of limiting access and disclosure of sensitive matters to Congressional committees, the need for non-statutory, and thus informal, agreements to facilitate cooperation, etc. The conclusion is that either a joint oversight committee or one in each House is preferable to what lies ahead if jurisdiction and oversight remain diffused among six committees.

The dilemma inherent in protecting intelligence budget figures while attempting to meet increased Congressional queries for disclosure is discussed, the only option mentioned being the NSC/OMB study recommendation to provide Congress with a classified annex to the annual budget depicting only "big dollar" amounts. No conclusion is reached.

The issue of providing substantive intelligence to Congress to meet increasing demands is discussed at length with the only conclusion being that there should be a centralized collation and distribution point within the community to insure coordination and appropriate caveating before dissemination to the Hill. Ground rules for such dissemination are also discussed and the tentative suggestion of either a joint Executive-Congressional classification board or an expanded Case act (give to Congress under an injunction of secrecy) is offered, although it is pointed out that the Pike agreement, while similar to the latter, has provided little protection.

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The needs of the public regarding oversight is mentioned, the main suggestion being that the PFIAB be required to issue an annual report to the public on the "activities and effectiveness of the intelligence community," although it is pointed out such a report would be fraught with hard calls as to declassification.

Comment

This chapter is a fairly complete exposition of those issues not necessarily pertaining to reorganization but which will probably have to be addressed in one way or another by the President. There is, however, not much of substance in the way of recommended solutions or even of specific approaches to such important issues as CIA/FBI interface or safeguards as to NSA activities. The draft Executive Order on restrictions (summarized in the chapter), which is a product of many weeks of inter-agency coordination, is testimony to the state of the art regarding solutions to these specific issues.

NATIONAL SECURITY COUNCIL

January 7, 1976

MEMORANDUM FOR: WILLIAM G. HYLAND

FROM: Richard Ober RO.

SUBJECT: Summary of Draft Report to the President
on Organization and Management of the
Intelligence Community

Attached, as requested, is a summary of the
December report of the OMB-chaired study group.

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Summary of the
Draft Report to the President on
Organization and Management of the
Foreign Intelligence Community

The Draft Report to the President on the Organization and Management of the Foreign Intelligence Community, dated December 16, 1975, discusses and sets forth alternatives for change in the present Intelligence Community structure. These alternatives are designed to ensure quality intelligence on a timely basis, the maximum use of limited resources and the prevention of future abuses. The issues explored deal with the basic structure of the Intelligence Community as well as with possible modifications of the NSC and Executive Office structures.

LEADERSHIP OPTIONS

Four major options with two variations on the organization and leadership of the Intelligence Community are identified in the study. A chart summarizing the elements of these options is at page 31A of the report.

- Option 1 - Centralized National Intelligence Program

This option creates a new agency headed by a cabinet level Director of Intelligence (DI) vested with resource and management control over all major intelligence programs (departmental intelligence components are retained). It also makes the DI responsible for collection and production of intelligence.

(None of the departments and agencies responding favored this centralization option.)

- Option 2 - Centralized Resource Control

This option strengthens the present DCI by giving him resource control over the national intelligence programs but leaves Defense's present operational control of these programs intact. It also separates this strengthened DCI from any operational or line control in the Intelligence Community but would allow him to establish priorities and requirements and produce national estimates.

- Option 2A

Same as Option 2 only this option provides for the retention of line control over present CIA production by the strengthened DCI.

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- Option 3 - Departmental Emphasis

In this option the present DCI would, with his Intelligence Community Staff and his National Intelligence Officers, be isolated from any management and resource control of any individual agency in order to make him a truly independent Community leader. The new leader would produce NIEs, review budgets and establish collection and production requirements. Resource and production control would remain with the appropriate departments and agencies.

(Defense and JCS favor this option, modified to further enhance Defense's role.)

- Option 3A

Same as Option 3 except that present CIA production responsibilities and resources for intelligence analysis would be transferred to the relevant departments.

(None of the departments and agencies responding favor this option.)

- Option 4 - Modified Current Arrangements

Without changing the basic organization of the Community, this option gives the DCI a second deputy for line authority over CIA so that the DCI can concentrate more on Community responsibilities. The DCI would retain all his other current responsibilities and in addition, would chair an Executive Committee (EXCOM) for SIGINT.

COMMENTS ON LEADERSHIP OPTIONS SUBMITTED BY DEPARTMENTS AND AGENCIES

Comments on the leadership options summarized above were requested of the agencies and departments which participated in preparing the Draft Report for the President. The key elements of those comments submitted are summarized below:

- Department of Defense

Defense's choice resembles Option 3 (Departmental Emphasis) which has been the Defense/JCS option throughout the study period. Modifications desired by Defense further weaken the reconstituted CIA (by

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removing all SIGINT and all overhead reconnaissance functions to Defense) and further weaken the community leader ("DFI") by abolishing the NRO EXCOM (now chaired by the DCI), by transferring the NPIC (National Photographic Interpretation Center) to Defense and by adding a senior military officer as a deputy to the "DFI."

- Joint Chiefs of Staff

The JCS also favor a modified Option 3 which is essentially the same as that of Defense.

- Director of Central Intelligence

The DCI clearly finds the study inadequate, particularly in not highlighting the need for an impartial non-departmental analytical capability to advise the President and the NSC. A second major weakness seen by the DCI is the failure of the study to clearly recognize the present preponderant voice of Defense in intelligence and to focus attention on the central problem of the relationship between the DCI and the Secretary of Defense. The DCI concludes that the options presented should not be used as a basis for decision but can illustrate the range of choices and serve to elicit general guidance from the President for further study and recommendations. In specific comments on the options, the DCI dismisses Option 1 (Centralized Program) as not meeting Defense needs and Option 3 (Departmental Emphasis) as destroying the DCI's present limited authority and making independent intelligence advice at the NSC level impossible. On the premise that the results of a major reorganization will not justify the attendant disruption, the DCI favors a "modified" Option 4 (Modified Current Arrangements) because he considers the present Option 4 too weak. If, however, the President desires a major change, the DCI favors some form of Option 2 (Centralized Resource Control) after further study by the Departments.

A major change to Option 4 proposed by the DCI is in the committee structure. The DCI would consolidate the present structure into two committees, both chaired by the DCI. One would be an "EXCOM of the NSC for Intelligence" responsible for Community management and policy matters which would have as members the Deputy Secretaries of State and Defense. This committee would control all important intelligence

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assets and have approval authority over the National Foreign Intelligence Program excluding tactical and departmental components. The proposed "EXCOM of the NSC for Intelligence" would apparently exclude the Assistant to the President for National Security Affairs and put the DCI, as chairman, over the policy-making consumers, State and Defense. The EXCOM's responsibilities would include binding approval authority over the National Foreign Intelligence Budget, thus coming close to the central resource control concept of Option 2.

The other would be the reconstitution of the United States Intelligence Board as a National Intelligence Board limited to responsibility for substantive intelligence production. USIB would, as now, be advisory to the DCI.

- Department of the Treasury

Treasury favors a combination of Option 2A (Centralized Resource Control with DCI Control of CIA Production) and Option 4 (Modified Current Arrangements) which would give the DCI more voice over resource control in the National Reconnaissance Program (NRP) and the Combined Cryptologic Program (CCP) without separating him from CIA. Treasury also favors in-depth interagency review of a narrower set of options for changes in the Intelligence Community.

- The Attorney General

The Attorney General did not comment on the leadership options.

- The Department of State

State declined to comment since the Secretary had not reviewed the report, but suggested that the report should be discussed at a high interdepartmental level before formulating views and specific recommendations for decision by the President.

- Office of Management and Budget

OMB did not comment or make recommendations on the study.

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ISSUES SEPARATE FROM THE LEADERSHIP OPTIONS

Several important issues have been treated in the report under the following categories:

- preventive measures against possible abuses ,
- covert action , and
- management improvements .

Among the agencies and departments responding there is unanimous agreement that guidelines are needed on propriety for intelligence activities . All respondents favor a Community-wide Inspector General except the DCI who believes that such a responsibility would be unworkable under most options and suggests that this function could be exercised by the NSC Intelligence Committee (NSCIC) or by PFIAB . Defense, JCS and the Attorney General favor an arrangement which would give the Attorney General ultimate responsibility for Executive Branch oversight; Treasury favors a Special Counsel to the President for this function . An oversight role for PFIAB is favored by JCS and Treasury .

On the issue of policy coordination , all respondents favor expanded use of the NSC structure and no one favored creating a separate Intelligence Advisor to the President .

All respondents agree that covert action should remain in the CIA and that formal meetings should be reinstituted by the 40 Committee . The Attorney General wants to become a member of the 40 Committee and Treasury thinks that additional staff is necessary for the Committee's effective operation .

There is general opposition to providing Congress with a classified budget annex on intelligence and to applying standard OMB reprogramming controls over intelligence funds .

Whether the leader of the Intelligence Community should be a member of the NSC or remain an advisor to that body is an issue addressed in the report . The report points out that full membership would strengthen the DCI's role within the Community while the continued advisor role has the advantage of keeping intelligence separated from policy . Although departments and agencies were not specifically asked to comment on this issue , Defense, Treasury and the DCI favor the continuation of the advisory role .

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Secrecy

This chapter addresses the issue of having classified information protected by statute rather than just Executive Order. The assumption is made that, in order to get such a statute passed, an overhaul of the present classification system is needed. A discussion follows of who might be covered by proposed sanctions, and of the various ramifications of providing criminal and/or civil sanctions against unauthorized disclosure, mainly in terms of contrasting what is desirable with what is assessed to be the art of the possible in Congress. It is also pointed out that Congress and its staffs are not subject to such sanctions by virtue of the Speech and Debate clause of the Constitution. No conclusions are reached.

Comment

The chapter provides little of substance. It fails to outline what Executive Order 11652 says now, how it might be changed in order to facilitate passage of the revised criminal code (S.1), currently under study in Congress, or what types of information other than that dealing with sources and methods need to be protected (sensitive, high level diplomatic correspondence, war plans, specifications of critical war-making components, etc.). There is also no option included which would ask the President to consider entreating Congress to arm itself with rules adequate to discourage unauthorized disclosure of information by individual members (threat of censure or expulsion, etc.).

INTELLIGENCE ACTIVITIES AND INDIVIDUAL RIGHTS -- SUMMARY

1. Constitutional and legal problems presented by intelligence-gathering activities.

A. Electronic surveillance - Title III of the Omnibus Crime Control and Safe Streets Act establishes a detailed procedure for interception of wire and oral communications within the United States, including a judicial warrant requirement applicable, in general, to criminal investigations. The Title contains a proviso, however, stating that it was not intended to limit the President's power in the national security and foreign intelligence area. Thus surveillance in this area is governed only by constitutional restriction. The present state of the law is as follows:

1. Under the Supreme Court's 1972 Keith decision, domestic security surveillances not involving the activities of foreign powers and their agents, require a judicial warrant.

2. Under two court of appeals decisions -- Brown and Butenko, electronic surveillance for foreign intelligence and counterintelligence purposes is lawful under the Fourth Amendment, even in the absence of

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a warrant, at least where the target of the surveillance is an agent or collaborator of a foreign power.

Under a December 1974, Presidential memorandum, the Attorney General is vested with authority to approve warrantless electronic surveillance within the United States for foreign intelligence and counter-intelligence purposes. Both the Department of Defense and the CIA conduct electronic surveillance for such purposes abroad. The surveillance operations of the NSA present some problems under the Brown and Butenko decisions because it may be practically impossible to limit intercepts to foreign intelligence information. Broadly speaking, all of these operations are probably legal under current law, but the special NSA problems are now, at the President's direction, the subject of study by the Justice Department.

B. Surreptitious Entry. Surreptitious entries are presumably subject to the same 4th amendment rules as electronic surveillance, including the Brown-Butenko exception to the warrant requirement.

The Attorney General presently has authority, under Presidential directive, to authorize surreptitious entry to install electronic surveillance for foreign intelligence purposes; no Presidential directive authorizes surreptitious entry for any reason other than electronic surveillance.

C. Mail Covers and Openings. Mail covers -- the recording of information on the outside of mail -- is not subject to Fourth Amendment restrictions. It is, however, governed by postal regulations that do not clearly specify which agencies may request covers and for what purposes. Mail opening is impermissible under the Fourth Amendment without warrant, but again this is probably subject to the Brown/Butenko exception for foreign intelligence and counterintelligence. Statutes, however, prohibit mail openings without warrant, and violations are subject to criminal penalty.

D. Other investigative techniques, such as use of informers, secret agents, physical surveillance and interrogations do not violate the Fourth Amendment or any statute. It is conceivable, however, that if they are not justified by legitimate governmental purposes they may, in some circumstances, violate First Amendment rights.

2. Constitutional and legal problems relating to information dissemination and use.

Dissemination of information obtained through intelligence investigations for partisan or otherwise illegitimate purposes could violate First Amendment or due process rights. The recently enacted Privacy Act precludes all disclosure of agency records without consent except under certain limited circumstances.

EXECUTIVE ORDER

ESTABLISHING RESTRICTIONS ON FOREIGN
INTELLIGENCE ACTIVITIES

Previous guidance on the relationship between the intelligence agencies and United States citizens was unclear. This order clarifies that relationship by detailing those activities which are prohibited. Without setting forth all restrictions under which foreign intelligence agencies are obliged to operate, nor derogating from any other laws, rules, regulations, or directives further restricting the activities of these agencies, it is hereby ordered as follows:

SECTION I. Definitions. As used in this Order the following terms shall have the meanings ascribed to them below:

(a) "Collection" means the gathering and storage, or the gathering and forwarding, of information.

(b) "Domestic activities" means activities within the United States.

(c) "Foreign intelligence" means information, other than foreign counterintelligence, on the capabilities, intentions, and activities of foreign powers, organizations or their agents.

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(d) "United States citizens" means United States citizens and permanent resident aliens.

(e) "Foreign counterintelligence" means activities conducted to protect the United States and United States citizens from foreign espionage, sabotage, subversion, assassination, or terrorism.

(f) "Incidental reception" means the receipt of information, collection of which by an agency is otherwise prohibited by this order and which is collected in the course of an agency's authorized foreign intelligence or counterintelligence activities.

(g) "Foreign intelligence agency" means any department or agency of the United States government, or component thereof, which is primarily engaged in foreign intelligence or foreign counterintelligence activities.

SECTION II. The following activities shall not be conducted either by any foreign intelligence agency or by any other department or agency in pursuit of foreign intelligence or foreign counterintelligence:

(a) Physical surveillance of United States citizens within the United States except to the extent that such surveillance is in accordance with law and is:

(1) Upon written approval by the head of the foreign intelligence department or agency; and is surveillance of individuals currently or formerly employed

by that agency, its present or former contractors, or such contractors' employees, for the purpose of protecting foreign intelligence sources and methods from unauthorized disclosure; or

(2) Of a person having contact with any persons described under subparagraph (1), or with foreign nationals in the United States in connection with foreign intelligence or counterintelligence operations, but only to the extent necessary to identify such person.

(b) Electronic surveillance of United States citizens except in accordance with law and under procedures approved by the Attorney General, and in no instance shall the Central Intelligence Agency engage within the United States in the electronic surveillance of United States citizens.

(c) Testing of electronic surveillance equipment within the United States except in accordance with law and under procedures approved by the Attorney General.

(d) Any opening of United States mail or examination of envelopes except in accordance with the provisions of United States postal laws and regulations.

(e) Access to Federal income tax returns or tax information except in accordance with statutes and regulations.

(f) Infiltration or secret participation in any organization composed primarily of United States citizens for the purpose of reporting on its activities or membership.

(g) Experimentation with drugs on human subjects, except with the informed consent of each such human subject and in accordance with the guidelines of the National Commission for the Protection of Human Subjects for Biomedical and Behavioral Research.

(h) Operation of a proprietary company on a commercially competitive basis with United States businesses except to the minimum extent necessary to establish commercial credibility. No investments by a proprietary company shall be made on the basis of any substantive intelligence not available to the public.

(i) Collection, evaluation, correlation or analysis, of information other than information from public sources or given voluntarily by its subject concerning the domestic activities of United States citizens except:

(1) Information about a United States citizen who is reasonably believed to be involved in international terrorist or narcotics activities or working in collaboration with a foreign nation or organization, but only if the information is collected abroad or from foreign sources in the United States in the course of an authorized foreign intelligence or foreign counterintelligence activity.

(2) Information related to the performance of agency contractors or prospective bidders, for purposes of contract administration.

(3) Information concerning criminal activities received through incidental reception, provided it is only transmitted to law enforcement agencies with appropriate jurisdiction.

SECTION III. Any federal agency seeking foreign intelligence within the United States from United States citizens shall disclose to such citizens its true identity. When collection of foreign intelligence within the United States results in the incidental reception of information from unknowing United States citizens, however, the receiving agency shall be permitted to make appropriate use of such information.

SECTION IV. No information on the domestic activities of United States citizens shall be transmitted to a foreign intelligence agency (or to any other federal agency to aid it in engaging in foreign intelligence or foreign counter-intelligence) from any other federal agency unless:

(a) The information had been lawfully compiled by the transmitting agency in furtherance of its authorized mission;

(b) The information is of a type which the receiving agency would itself have been permitted to collect under the provisions of this order;

(c) The information is provided in furtherance of the authorized mission and responsibilities of the receiving agency;

(d) The information is provided in good faith under a reasonable belief that the information is relevant to the receiving agency; and

(e) The information is provided under guidelines and procedures issued by the Attorney General designed to ensure the protection of the constitutional and statutory rights of United States citizens.

SECTION V. Nothing in this Order prohibits an agency from retaining information when retention is required by law, such as retention required to preserve evidence or other information for possible court action.

SECTION VI. No foreign intelligence agency shall:

(a) Provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration or state or local police organizations of the United States except as expressly authorized by law; or

(b) Participate in or fund any law enforcement activity within the United States except as may be authorized by law.

Provided, that this prohibition shall not preclude:

(1) Cooperation between a foreign intelligence agency and appropriate law enforcement agencies for the purpose of protecting the personnel and facilities of the foreign intelligence agency or preventing espionage or other criminal activity related to foreign intelligence or foreign counterintelligence; or

(2) Provision of specialized equipment or technical knowledge for use by any other Federal department or agency.

SECTION VII. Foreign intelligence agency personnel may not be detailed elsewhere within the Federal government except as consistent with law. Employees so detailed shall be responsible to the host agency and shall not report to their parent agency on the affairs of the host agency except as may be directed by the host agency. The head of the host agency and any subsequent successor shall be informed of the detailee's association with the parent agency.

SECTION VIII. Nothing in this Order shall prohibit any agency having law enforcement responsibilities from discharging such responsibilities pursuant to law. Nor shall this Order apply to any activities of the Federal Bureau of Investigation.

SECTION IX. Nothing in this Order shall prohibit any agency from engaging in the collection, evaluation, correlation and analysis of information on current or former employees (including military personnel and employees of other Federal departments or agencies detailed for service with the foreign intelligence agency); applicants for employment with such agency; voluntary sources or contacts or individuals who in good faith are reasonably believed to be potential sources or contacts; current and former contractors and current or former employees or applicants for employment by such contractors; and all persons not included above who must be given access to classified information which could disclose foreign intelligence or foreign counterintelligence sources and methods; provided, however, that collection of such information is done only in accordance with law and by written authority from the head of such agency to determine the fitness of such persons to become or remain associated with such agency or to have such access, or in the case of a former employee to investigate matters related to his period of employment, or in the case of a voluntary source or contact, to determine suitability or credibility.

SUMMARY OF VIEWS
PRESENTED BY
SELECTED OUTSIDE EXPERTS

The following are major points from discussions over the past several days with McGeorge Bundy, John McCone, Admiral Moorer, Paul Nitze, David Packard and Ted Sorensen.

McGeorge Bundy

- The President, as Commander in Chief, should take the lead in reforming the Intelligence Community; there is political merit in beating the Congressional committees to the punch. A good opportunity for Presidential action will be during the Congressional recess.

- More intelligence of an open nature should be made available to Congress. This will help Congress in its oversight role, although oversight will always be a difficult problem, particularly if Congress attempts to deal with prospective programs.

- The 40 Committee has never been effective. A "President's man" is required to monitor seriously activities in this area. Moving clandestine operations to State would change the character of the department and pose difficulties for the conduct of its normal operations.

- PFIAB has been a free-wheeling body that has been helpful from time to time, but it has never had an adequate staff and would probably be overburdened if given an oversight role. On the other hand, the ACDA Advisory Committee, for example, has had substantial impact and given the President access to the ADA that he would not otherwise have had.

- A two-hatted DCI will probably never work. Allocating budgets is a management problem and seems more appropriate for OMB, the instrument created for these purposes.

- The national estimate process has never worked very well. Reports tend to be done on given situations at times when one could care less. The national estimate is an extremely important product and it is necessary to improve its quality.

- DIA has not provided the oversight to DOD intelligence activities which was intended.

- Time spent in insuring "plausible deniability" was almost uniformly wasted. The President can take responsibility for actions of his Administration. The distinction between diplomatically-necessary deniability in such cases as the U-2 or the Glomar Explorer, and domestic accountability, was drawn.

John McCone

- The President must make up his mind how the Intelligence Community should be organized, do what he can to accomplish this by Executive Order, and propose legislation for the remainder. Congress will do nothing without Presidential initiative.

- CIA has been tarnished and should be done away with. A new agency should be establish as part of the National Security Council. The director of the agency would be responsible for all existing CIA operations, would coordinate all intelligence agencies budget responsibility for all intelligence activities. He would be Chairman of USIB and have direct access to the President. There should be two deputy directors, one for intelligence matters and one for community affairs.

- A permanent subcommittee of the NSC should be established to have oversight responsibility for the new intelligence agency. It would also review 40 Committee actions.

- If CIA continues to exist, three steps should be taken:
(1) The General Counsel should be made a Deputy Director with access to the entire agency; (2) The Inspector General position should be given more status and strengthened; (3) There must be a regular program of review of ongoing activities.

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- A Joint Congressional Committee on Intelligence should be formed along the lines of the Atomic Energy Committee. The Atomic Energy Committee has never had a problem with secrecy.

- Legislation is necessary to impose penalties on government employees who disclose secrets during or after their period of service in government.

- There have been problems with DIA's production, partly because it has been staffed by the Joint Services and the services keep the best officers for themselves. Further, intelligence is not a high priority within the Services.

Admiral Moorer

- Radical change in the Intelligence Community should be avoided. The primary problem is not the organizational structure but people.

- It would be a mistake to centralize intelligence gathering under one person. The DCI cannot control or schedule, for example, the real time activities of submarines or other military collection agents, nor can he defend them when they run into trouble. In addition, there is a need for duplication and competition in intelligence as there is in R&D matters.

- NSA is a valuable instrument, but individual combat units should have their own intercept teams. Wartime activities cannot be centralized and run from Washington.

- The open hearings in the House and Senate are a "national disaster". They are exposing secrets and telling the Soviets a great deal about the effectiveness of our intelligence activities, thus permitting the Soviets to develop countermeasures.

- A Congressional oversight committee will pose severe operational problems. Leaks will occur and intelligence information will be used for political purposes. The President needs to take action to deal with the pressure from Congress, but it should not be drastic.

Paul Nitze

- To some degree, the problems the Intelligence Community now faces are cosmetic and any changes must be cosmetic as well. There is a danger, however, that we will not do what needs doing.

- The NRO works well under EXCOM as far as Defense and CIA are concerned but not, perhaps, from OMB's point of view. A perennial problem is the allocation of costs to various programs, and making

decisions based on the allocations will always have a highly judgmental character. The equipment is very expensive in certain intelligence gathering systems and new tasks require new "beasts". Decisions on new equipment require a great deal of familiarity with the programs and the technologies.

- As organizational changes are considered for the Intelligence Community, there is no point in further downgrading CIA. Nor should covert activities be separated from the rest of its operations. The DCI should have the National Estimating Staff. The old Board of National Estimates worked better than the present NIO system, where the National Intelligence Officers farm out estimates to the departments for writing.

- Crisis management is better institutionalized than it was a decade ago. There are differences between mini crises which need not come to the President and can be handled on a coordinated basis by the appropriate government agencies, and the maxi crises which will probably always be handled on an ad hoc basis, depending on the needs and predilections of the President.

- There was much more systematic handling of 40 Committee matters 10 years ago than there is today.

- The government has never adequately dealt with the problem of a "net assessments". At one time the initiative existed in State in the Policy Planning Staff under Acheson to perform net assessments, and under Eisenhower the NSC had the role. The CIA is not and should not be in the net assessment business, nor should the NSC; State is his candidate.

David Packard

- Consideration should be given to having the Attorney General participate in 40 Committee meetings to focus on the legality of proposals. Attorneys General who have participated in the past did so as the President's personal representative and did not get into legal or moral issues.

- Both national and tactical intelligence are necessary so that (1) we know what might happen and (2) what to do if it happens. The military must know all about Soviet radars, not just where they are.

- DIA's analysis has tended to be influenced by the military services' interests. Perhaps DIA should report directly to the new Deputy Secretary of Defense for Intelligence, and not the Joint Chiefs.

Ted Sorensen

- The key issue for the President to focus on is clandestine operations, including covert action. Because of the great risk of exposure, covert action is in the national interest only in very rare instances. One good measuring stick is whether an activity is still worth it if it becomes known publicly. Covert activity, however, should not be banned by law. Some flexibility is required. If covert actions were banned, the vacuum might be filled in a totally uncontrolled manner.

- On the question of Congress' right to know, the Executive Branch should try to work out something with Congress: The voluntary arrangement worked out with Chairman Pike on the publication of classified materials was a good one, and might be the basis for a permanent arrangement.

- There should not be criminal statutes governing misuse of classified information by non-government (or contractual) employees. If there is a broadening of the criminal statutes, there must be concurrent reform of the classification system.

- There is great potential for abuse in the relationship between the Intelligence Community and private enterprise. Contact between CIA and private companies should be restricted; if there is contact, a neutral observer should sit in, such as somebody from the State Department.

- Congress must increase its oversight capability, but not in such a way that it encroaches on Executive Branch powers. Congress cannot run CIA, nor can it decide on specific covert operations.

- CIA must be more accountable to policy-makers, including the Secretary of State and ambassadors in countries where the CIA has operations.

Congressional Recommendations

Each Select Committee has forwarded, on an informal and confidential basis, their initial designs regarding recommendations for legislation they intend to propose.

Both Committees propose that their work essentially be continued in a more permanent capacity by the creation of a single oversight committee in each House. The House would also offer to join the Senate in such oversight, but the Senate, to date, has made no such preliminary recommendation.

The House proposal consists of three aspects: fiscal procedures; Congressional oversight; and secrecy. Concerning secrecy, the House Select Committee proposes an expansion of the present Pike agreement to include a triumvirate of the Speaker and Majority and Minority Leaders as the arbitrators of disputes with the Executive, rather than the Judiciary. It also calls for an independent classification review commission (appointed by the President and confirmed by the Senate) which would review, upon request by any individual or group, any classified material, with a view toward de-classifying it (majority vote required). The President would have a veto, however, by virtue of written certification that to do so would cause "grave and immediate danger to the defense of the U.S." This review commission would also have the option of renewing the period of classification (advocated as being for five years only) by majority vote. This renewal authority would only extend to one renewal period, however. An interesting addition to these recommendations, however, is the call for the House to adopt strict and comprehensive rules to safeguard unauthorized disclosure of classified information supplied in confidence to them by the Executive. These rules would include procedures for censure or even expulsion of an individual member who violates or ignores such rules.

The thrust of these recommendations would be to grant explicit authority to Congress to declassify Executive Branch materials and to also remove from immediate Presidential supervision the power to withhold classified Executive Branch materials requested by anyone.

The House also proposes a regularization of the budget review process regarding all intelligence expenditures. They would do this by (1) making the budget public ("big dollar" figures only), (2) requiring the DCI to prepare a community-wide intelligence budget, (3)

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require an annual authorization for all intelligence activities, and (4) empower the GAO to audit all intelligence spending.

These proposals would, if enacted, essentially "uncover" the way intelligence activities are organized and managed in this country. It would also force a change in the community's structure to the extent of giving the DCI budgetary authority he does not now have, and abrogate that which OMB does have by requiring that the DCI's "draft" budget be submitted to Congress coincidentally with it going to OMB and the President -- to say nothing of Presidential prerogatives to withhold all but the final product from Congress.

Regarding oversight, the House Select Committee proposes that oversight per se be shared with other committees but that legislative jurisdiction be exclusively in the hands of the new committee. As with the Senate proposal, the head of each department or agency [✓]should be obligated to keep the committee "fully and currently informed" regarding all programs relating to foreign intelligence and covert operations.

The implications of the phrase "fully and currently" are obvious. Aside from the fact that the Senate may consider this requirement to be an encroachment on its Constitutional role regarding foreign affairs, the prospect for preemptory challenges by the Congress concerning the conduct of foreign activities heretofore delegated by the Constitution solely to the President is upon us.

As with the Senate Select Committee proposals, these recommendations taken together constitute an unabashed desire to commiserate on, and if necessary pre-empt the conduct of, the nation's foreign affairs. The only redeeming feature of them is the apparent attempt to recognize that along with these new prerogatives goes the responsibility to safeguard the unauthorized disclosure of classified information.

The draft Senate Select Committee proposals consist of an "issues" paper and a draft bill to create a permanent Senate Committee on Intelligence Activities. The Issues Paper which the Senate Select Committee has asked us to consider is basically sound in terms of identifying the issues and stating the decisions which need to be made, and, in many instances, parallels points made in the NSC/OMB study. The role of the DCI is stressed, mainly in terms of "how to get a handle" on the seemingly amorphous intelligence "community." Some questions are, however, stated

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so as to prejudge the answers and there are some inaccuracies, oversimplifications or over-statements. The role that Congress will play in the intelligence business is probably the major "issue" between the Executive and Legislative branches.

The draft bill would, like the initial proposals put forth by the House Select Committee, restructure the relationship between Congress and the Executive regarding intelligence and, by extension, the conduct of foreign affairs. In effect the draft bill to create a Committee on Intelligence Activities would:

- make the Legislative Branch co-equal with the Executive and an intelligence consumer,
- give the Senate the implicit right to overrule the President on public disclosure of intelligence information, and
- require intelligence agencies to keep the Committee "fully and currently informed" on all intelligence activities.

While the bill does not cover the aspects of protecting unauthorized disclosure within the Senate or the option of a "third agency of appeal" for de-classification, it is at the same time more specific and more comprehensive regarding obligations and requirements incumbent upon the Executive Branch. As an example, the draft Senate bill would allow the committee to pre-ordain "specific activities deemed as especially sensitive," the conduct of which could not be undertaken without express approval of the committee.

Comment

Both the House Select Committee proposals and the draft Senate Select Committee bill creates the overall impression that the Executive and Legislative Branches have an equal right to receive and oversee intelligence. In fact, both give the Legislative Branch a greater than equal role in the release of material. Even if the President submits a written notice to either committee that a given piece of information should not be released, the committee can then, if it desires, refer the matter to the House or Senate floor for action.

In addition, both proposals charge the head of any department or agency involved in intelligence activities to furnish any information requested

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by the committee(s) on matters within its jurisdiction and in one case (the Senate) does not permit initiation of any intelligence activity specified as "sensitive" by that committee, until the Committee has been fully informed of the activity and has had the opportunity to provide "advice" to the Executive on it. Both proposals also allow the committee(s) to authorize appropriations for all foreign intelligence agencies, thus undercutting the current jurisdiction of appropriations committees.

In sum, we have a real fight on our hands. If the President is to retain his Constitutional prerogative to conduct all aspects of foreign affairs (covert operations, clandestine intelligence, overhead reconnaissance, etc.), he must resist the encroachment represented by the proposals of these two committees.